

No. 82-1767

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ALEXANDER L. STEVENS,

In the Supreme Court of the United States

OCTOBER TERM, 1983

HATTERAS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner claims that, pursuant to the common law of abandonment and found property, it is the rightful owner of the sunken Civil War naval vessel *U.S.S. Hatteras*.

1. The *U.S.S. Hatteras* was assigned to blockade duty in the Gulf of Mexico south of Galveston, Texas, when, on January 11, 1863, it encountered the notorious Confederate raider *C.S.S. Alabama*. The *Hatteras* was severely damaged in the ensuing engagement and sank. The United States Navy made no attempt thereafter to raise or salvage the vessel or even to pinpoint the location of the wreck.

Since 1972 petitioner has been engaged, intermittently, in efforts to locate the *U.S.S. Hatteras* and to raise her remains. In February 1976 petitioner informed the Navy that it had located a sunken vessel that it believed to be the

Hatteras and that it wished to salvage the vessel. On the basis of the Chief of Naval Operations' certification that the *Hatteras* "is not essential to the defense of the United States" (Pet. App. 32a), the Secretary of the Navy stated in a March 25, 1976, memorandum: "[I]nasmuch as the Department of the Navy has in fact long since abandoned such vessel, a formal declaration of abandonment is hereby made" (*id.* at 35a).¹ Neither the Secretary nor any of his subordinates made a written finding in this connection that the sunken vessel was devoid of commercial value or that retention of the vessel was uneconomic. Yet regulations (41 C.F.R. 101-45.500) that implement provisions of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 483(h) and 512, require that such a written finding be made by the head of a federal agency as a prerequisite to abandonment of federal property under the agency's control.

2. Thereafter, on January 28, 1977, the Secretary of the Interior nominated the wreck of the *U.S.S. Hatteras* for inclusion in the National Register of Historic Places. Petitioner responded by filing this action pursuant to the Suits in Admiralty Act, 46 U.S.C. 741 *et seq.*, and the Public Vessels Act, 46 U.S.C. 781, seeking confirmation of its claim to ownership of the *Hatteras*, or, in the alternative, a salvage award. The United States District Court for the Southern District of Texas held that the United States had not effected a valid legal abandonment of the *Hatteras* (Pet. App. 12a-18a) and that petitioner's salvage claim was time-barred (*id.* at 3a-6a). The court of appeals affirmed without opinion (*id.* at 1a).

¹The memorandum from the Chief of Naval Operations to the Secretary stated that "title [to the *U.S.S. Hatteras*] is still vested in the U.S. Navy pending formal abandonment" (Pet. App. 33a).

3. a. The decision of the courts below presents no issue warranting further review. Petitioner claims (Pet. 4-6) that it was free to appropriate the sunken vessel *U.S.S. Hatteras* under the common law of abandonment and found property. But the Constitution vests exclusive authority to dispose of property of the United States in Congress or its delegate. Article IV, Section 3, Clause 2 provides in pertinent part:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *.

Federal officials have no power to dispose of federal property absent an express or implied delegation of authority under the Property Clause. *Royal Indemnity Co. v. United States*, 313 U.S. 289, 294 (1941).² Moreover, as this Court has emphasized:

[T]he Government, which holds its interests * * * in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.

United States v. California, 332 U.S. 19, 40 (1947). Accordingly, the United States' title to the *U.S.S. Hatteras*

² *Ashwander v. TVA*, 297 U.S. 288, 338 (1936), cited for a contrary proposition by petitioner (Pet. 7), holds only that the Constitution does not limit the methods that Congress or its delegate may prescribe for disposition of federal property.

could not be lost through operation of the judge-made doctrine of abandonment.³

b. Petitioner relies (Pet. 5) upon the Secretary of the Navy's declaration of abandonment. Yet petitioner does not quarrel with the conclusion of the courts below that the Secretary's action was ineffective to accomplish abandonment of the *U.S.S. Hatteras* under the governing statute and regulations. See page 2, *supra*. Petitioner has not cited any other statutory predicate for abandonment by the Secretary and we are aware of none.⁴ The Secretary's apparent misapprehension of the proper procedures for

³None of the ship abandonment cases cited by petitioner (Pet. 4-6, 8) involved an assertion of title adverse to the United States. Petitioner's reliance upon *United States v. Pennsylvania & Lake Erie Dock Co.*, 272 F. 839 (6th Cir. 1921), is also misplaced. There the court recognized the general rule that "the government cannot abandon its property without an Act of Congress to that effect" (*id.* at 843), but deemed that rule inapplicable to abandonment of a dock constructed pursuant to the navigation servitude. The court characterized the government's interest at issue as "a mere easement for purposes more or less temporary in their nature" (*ibid.*). This rationale, even if valid, has no application to the present case.

⁴Petitioner seeks (Pet. 5) support for a finding of abandonment in the arbitration award made to the United States by an international tribunal pursuant to a treaty entered into by the United States and Great Britain after the Civil War providing for resolution of "The Alabama Claims." Those claims arose from Great Britain's assistance to Confederate blockade runners. Although the sinking of the *Hatteras* apparently was within the scope of the United States' claim against Great Britain, the arbitrators made a lump sum award without assigning any particular sum as indemnification for the loss of a particular vessel. In any event, assuming it could be shown that Great Britain paid indemnity to the United States for the sinking of the *Hatteras*, it would not follow that the United States abandoned its title to the remains of the vessel by accepting these damages. The memorandum from the Chief of Naval Operations (see page 2 note 1, *supra*) indicates the contrary.

abandonment cannot overcome the impediment to petitioner's claim. *United States v. San Francisco*, 310 U.S. 16, 32 (1940).⁵

c. Petitioner's final contention (Pet. 6-7), is that the Secretary of the Interior lacked authority to designate a sunken ship outside United States territorial waters for inclusion in the National Register of Historic Places. This question is not properly presented because petitioner did not raise it below and it was not addressed by the lower courts. See *Illinois v. Gates*, No. 81-430 (June 8, 1983), slip op. 2-8. Nor does this issue have any bearing on the underlying title dispute, because the United States has never contended that its title to the *U.S.S. Hatteras* depends upon the historic register designation.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JULY 1983

⁵Petitioner does not now argue that the United States is equitably estopped to oppose his claim. He did make that argument in the district court, but the district court rejected it, finding no reliance upon the Secretary's action (Pet. App. 18a). Nor is there any showing of affirmative misconduct in this case. See, e.g., *INS v. Miranda*, No. 82-29 (Nov. 8, 1982); *Schweiker v. Hansen*, 450 U.S. 785, 788 (1981).